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and Other Cruel, Inhuman
or Degrading Treatment
or Punishment

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE 245th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 April 1996, at 10 a.m.

Temporary Chairman: Mrs. KLEIN (Representative of the Secretary-General)

Chairman: Mr. DIPANDA MOUELLE

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GE.96-15989 (E)

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

The meeting was called to order at 10.10 a.m.

OPENING OF THE SESSION BY THE REPRESENTATIVE OF THE SECRETARY-GENERAL; adoption of the provisional agenda

1. The TEMPORARY CHAIRMAN declared open the fifteenth session of the Committee and welcomed the members who had been elected or re-elected at the Fifth Meeting of the States parties to the Convention.

SOLEMN DECLARATION BY THE NEWLY ELECTED MEMBERS OF THE COMMITTEE (item 2 of the provisional agenda)

2. The TEMPORARY CHAIRMAN invited the five members of the Committee who had been elected or re-elected at the Fifth Meeting of the States parties to the Convention to make the solemn declaration set out in rule 15 of the Committee's rules of procedure (CAT/C/3/Rev.1).

3. Mr. Burns, Mr. Camara, Mr. González Poblete, Mr. Pikis and Mr. Yupanqui solemnly declared that they would perform their duties and exercise their powers as members of the Committee against Torture honourably, faithfully, impartially and conscientiously.

ELECTION OF THE OFFICERS OF THE COMMITTEE (item 3 of the provisional agenda)

4. Mr. BURNS announced that, at an informal meeting held earlier, the Committee had elected by acclamation Mr. Dipanda Mouelle as Chairman of the Committee, Mr. Sørensen, Mr. Yakovlev and Mr. González Poblete as Vice-Chairmen, and Mrs. Iliopoulos-Strangas as Rapporteur.

5. Mr. Dipanda Mouelle took the Chair.

ADOPTION OF THE AGENDA (item 4 of the provisional agenda) (CAT/C/35)

6. Mr. BRUNI (Secretary of the Committee) said that, in the context of the reorganization of its work, the General Assembly had decided that it would consider certain items only every two years, including the annual reports submitted by the Committee in accordance with article 24 of the Convention. Since that report (A/50/44) would therefore be considered at the fifty-first session of the General Assembly, item 10 of the provisional agenda should be amended as follows: subparagraph (a) ("Annual report submitted by the Committee under article 24 of the Convention") should be deleted and subparagraph (b) ("Effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights") should become the heading of item 10.

7. The provisional agenda (CAT/C/35), as orally amended, was adopted.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)

Initial report of Armenia (CAT/C/24/Add.4/Rev.1)

8. At the invitation of the Chairman, Ms. Soudjian and Mr. Nazarian (Armenia) took places at the Committee table.

9. Ms. SOUDJIAN (Armenia) stressed that Armenia was submitting a report as an independent State for the first time. In doing so, the Armenian authorities wished not only to fulfil their obligations under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but also to demonstrate their resolve to implement the fundamental instruments adopted by the United Nations, among them the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Vienna Declaration and Programme of Action. The Convention was an important document, in the light of which the functioning of human rights mechanisms could be examined at the legislative, executive and judicial levels.

10. The Constitution of the Republic of Armenia, adopted on 5 July 1995, guaranteed the protection of fundamental human rights and established Armenia as a democratic country subject to the rule of law. Other laws had been adopted in the area of human rights, among them the law on refugees, the law on victims of repression, and the law on freedom of conscience and religious organizations. The absence, however, of the conditions necessary for the establishment of a new relationship between the State and its citizens made the implementation of those laws difficult. In that regard, the Armenian delegation hoped that its dialogue with the Committee would provide not only an analysis of the current situation in that country but also guidance for the future, with particular emphasis on humanizing the penitentiary system in accordance with the Standard Minimum Rules for the Treatment of Prisoners.

11. The Universal Declaration of Human Rights commenced with the recognition of the inherent dignity of all members of the human family, and it was that principle which should motivate the re-establishment of a democratic society. Unfortunately, Armenia was not yet entirely free from Soviet traditions and ideology, especially in the area of criminal justice. Another obstacle was the dire economic conditions, which affected in particular such vulnerable population groups as women, children, refugees and prisoners.

12. On 20 November 1995 a law had been passed establishing a constitutional court whose chief task was to ensure the implementation of the principles of the Constitution. It was legislation and the enforcement of that legislation by fair judicial bodies which fundamentally guaranteed the protection of human rights and fundamental freedoms. Since complementary structures were sometimes necessary as well, the Armenian authorities had opened a Centre for Democracy and Human Rights, to provide education and information in those areas. The creation of a training programme for law enforcement officials was another means of preventing breaches of human rights. In that regard, she drew the Committee's attention to the planned cooperation between the Centre for Human Rights and Armenia. The Armenian Government had, moreover, recently signed an agreement with the International Committee of the Red Cross,

to re-establishing democracy and the rule of law in Armenia.

13. Mr. SORENSEN (Country rapporteur) said that the constitutional reform of the internal problems being experienced by some of the States [illegible] fighting in neighbouring countries. Armenia was going through a transition period and the Committee hoped that it would soon be able to [illegible] bolster its fledgling legislation in the area of human rights.

14. The Committee was pleased to note that the new Constitution expressly prohibited torture. Article 2, paragraph 2 of the Convention nevertheless stipulated that States parties should take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. Such torture must first of all be defined as an offence in domestic law. Paragraph 8 of the report indicated that the ratification of the Convention obliged Armenia to incorporate the provisions of the Convention in its domestic law. Had such measures been envisaged or did the Convention automatically take precedence over national legislation?

15. Recalling that under the terms of article 2, paragraph 2, of the Convention, no exceptional circumstances could be invoked as a justification for torture, he inquired whether the various provisions guaranteeing protection for human rights in Armenia could be suspended, and if so, by what authority, under what circumstances, and for how long. Article 2 [illegible] could not be invoked to justify torture. Had any such provision been envisaged in Armenian criminal legislation?

16. It would be useful to know whether, in particularly grave cases of [illegible] the death penalty, the State Party was liable to a [illegible] eight years of imprisonment, as paragraph 21 of the report suggested. The Armenian delegation should specify whether paragraph 17 was correct in that pre-trial detention must not involve any form of punishment, indicating what time spent in pre-trial detention could not be deducted from the eventual sentence.

17. The principal aim of article 3 of the Convention was to prevent the return of any and all persons to countries where they stood the risk of being subjected to torture, now that they were asylum seekers or even nationals. The Committee set the Convention, which had universal scope, above bilateral agreements: it would be useful to know the relevant provisions of Armenian law, in particular, who took the decision to expel an individual - especially in the case of an asylum seeker - and if such a decision could be appealed before a court. Armenia should describe that entire process fully, with regard to both law and practice, especially since, according to information submitted by non-governmental organizations, Armenia had returned certain persons to countries where conditions were unfavourable.

18. With regard to articles 4 to 8 of the Convention, it was important to know what measures Armenia had taken to penalize the crime of torture and to ensure universal jurisdiction, or, in other words, how it punished acts of

torture whether or not committed on its territory. That was an obligation since one of the fundamental aims of the Convention was to make outlaws of torturers.

19. Eliminating the scourge of torture called for education and training, as provided under article 10 of the Convention. Paragraph 45 of the report stated that the Armenian Government was planning to pursue a policy of integrating human rights into the teaching and training of some members of the judiciary and the security personnel. Regular police, prison guards and members of the border patrol should also be educated in the prohibition against torture, and in specific aspects of that prohibition, as should public prosecutors and judges. Health personnel were another target group, since, unfortunately, certain doctors were implicated in cases of torture, and at all stages.

20. With regard to article 11, paragraph 47 of the report indicated that police custody could not exceed 72 hours, but could under certain circumstances be extended to 30 days. The members of the Committee were well aware that abuses generally took place not in places of detention, but in police stations; the risk of abuse therefore increased with the length of the custody. While a period of 72 hours might be acceptable as a strict maximum, a period of 30 days was excessive. It would be interesting to know whether there were special guidelines governing the circumstances under which custody could be extended to 30 days, who took such a decision, whether remedies were available, and how the procedure functioned in practice. There were four essential safeguards against abuses in police stations: the right to consult a lawyer, the right to inform a second or third party, the right to be examined by an independent physician, and the right to be informed of one's rights in a language one understood. It would be useful to have details of the provisions of the current Penal Code concerning those four safeguards and to know whether all the rights of an individual apprehended by the police were respected. That question took on special importance because Armenia was in the process of adopting new laws, and could well benefit from the views of the members of the Committee against Torture in that regard. For the protection of the rights of persons under arrest, two other important elements should obtain: first, a code of conduct for members of the police and guidelines regarding interrogations, and second, the establishment of a police log where every action and occurrence during the period of custody would be recorded.

21. In the matter of articles 12 and 13 of the Convention, Armenia should specify in particular whether investigations were conducted by a totally independent body in cases where there was reason to believe that an act of torture had been committed on its territory.

22. He stressed the great importance of article 14, which guaranteed redress, compensation, and rehabilitation to all victims of torture. With regard to the right to redress, he noted with satisfaction that the State had taken a great step forward by acknowledging errors it had committed in the past. With regard to compensation, it would be useful to know how the procedure functioned: whether it was exclusively the responsibility of the person tortured to bring an action or whether, in the event that, under the terms of the Convention, a complaint was lodged against a member of the police, proceedings were automatically instituted with a view to providing

compensation to the victim. Torture victims were in fact rarely in a position to bring an action before the courts. Rehabilitation should be provided to all victims of torture, affording them the chance to live a decent life; the establishment of a rehabilitation centre in Armenia was therefore auspicious.

23. In addition to country reports, the Committee also received information from other sources. Amnesty International had transmitted information containing reports that detained persons had been mistreated and beaten. The State party should supply, where available, statistical information concerning the number of cases of that kind, and, for example, the number of police who had been investigated for such acts. The report of Amnesty International also indicated that victims of torture were reluctant to lodge complaints for fear of reprisals, and that incarcerated persons were barred from all contact with members of their family, making it impossible for them to institute an action. The report of Amnesty International drew particular attention to an incident that had occurred on 19 June 1995. After a raid by masked men on the offices of a charity organization of former officials of the Ministry of the Interior, in the centre of Erevan 14 persons had been arrested, among them 11 retired officials who were members of the organization; during their detention, they were mistreated. Amnesty International also pointed out that the extreme difficulty of bringing an action contravened the terms of the Convention, which provided that, when a complaint of mistreatment was lodged, the State party must immediately have an investigation carried out by an impartial body so as to bring the culprits quickly before the courts. The Committee awaited with interest any clarifications the delegation could supply in response to that information.

24. The CHAIRMAN noted that the country rapporteur had made an exhaustive study of the report of Armenia. While associating himself with the questions raised, he would like further clarifications with regard to several points. First and foremost, he welcomed the creation of a Centre for Human Rights in Armenia, a country in transition whose difficulties were known to all. The report made various references to a draft penal code, and it would be useful to know if that text had been adopted, or when it would be. Although the report indicated that Armenia had not yet incorporated a definition of torture, within the meaning of the Convention, in its domestic law, it also indicated, on a number of occasions, that acts of torture were punishable. The question arose how those acts were punished, when under the principles of law, without a crime there could be no punishment. The Armenian authorities should review the matter of the criminal clarification of acts of torture, so as to comply with article 1 of the Convention.

25. Clarifications on the status of the judiciary, and in particular on how its independence was ensured and how judges were appointed or dismissed would also be of interest.

26. He then inquired whether solitary confinement existed in Armenia, and, if so, by what provisions it was regulated and what role the judge played in monitoring it.

27. With regard to article 5 of the Convention, the Committee placed great emphasis on the notion of universal jurisdiction, under which all torturers

should be punished whatever their whereabouts. Such persons must be extradited or tried, and provisions should be enacted to that effect.

28. Mr. BURNS inquired whether there existed in Armenia a provision resembling habeas corpus, under which all persons who believed they had been unjustly detained had the right to apply directly to a court to rule on the lawfulness of the detention.

29. It was known that Armenia was facing a difficult situation at its borders, and in economic terms; in the circumstances, it should be commended for the numerous measures it had taken to ensure the protection of human rights. A number of questions nevertheless arose; it would be particularly interesting to know whether the army or the security forces had powers of arrest and detention which overrode usual procedures and, if so, to have details with regard to the nature of those powers.

30. Clarification would be useful on paragraph 20 of the report, in which the term "extradition" was not used in the accepted sense, perhaps because of a translation error.

31. A number of questions arose with regard to refugees. Upheavals in the region had obliged many minorities to migrate, and Armenia, like other countries in the region, faced a refugee problem. The Armenian Government should be commended for introducing legislation giving official recognition to the Convention relating to the Status of Refugees, but it would be useful to know what practical measures it had taken to ensure the effective implementation of that legislation, and in particular whether a national law or administrative guidelines had been adopted for that purpose. Further questions concerning refugees which had been raised publicly, were the forced recruitment of refugees and foreign nationals into the Armenian army. Information was needed on the legal grounds on which the armed forces recruited foreign nationals and on whether the Armenian Government enacted provisions to prohibit involuntary recruitment.

32. Since the country rapporteur, he wished to know the current situation regarding access to a lawyer at the time of arrest. Regarding the information supplied by Amnesty International, he asked for further details on the ill-treatment of detained persons, and in particular that of the three persons who had reportedly retracted their statements on the grounds that they had been extracted by force by members of the police. Detailed information should also be provided on the ill-treatment to which religious minorities in Armenia were said to be subjected. Lastly, clarification should be provided on reported ill-treatment of members of the charity organization of former public officials.

33. Mrs. ILIOPOULOS-STRANGAS associated herself with the questions asked by other members of the Committee, and said that she had only two additional matters to raise. Firstly, with regard to paragraph 5 of the report, she would like to know more about the process by which the Convention was being incorporated in national legislation, as well as the reason for the delay in finalizing its incorporation, since the Convention had entered into force in Armenia in September 1993.

34. Secondly, with regard to article 3 of the Convention, paragraph 16 of the report stated that Armenian legislation contained no provisions on extradition. Did there exist, for example, a draft law regarding the expulsion and return of foreigners to countries where they stood the risk of being tortured? The constitutions of modern States generally prohibited extradition that was politically motivated, for example.

35. Mr. REGMI commended Armenia for the efforts it had made since independence to establish a democratic regime. Although the Constitution of July 1995 indeed embodied respect for human rights, the Convention against Torture was not yet fully effective in Armenia, which was still in a transition phase. The draft penal code and the draft code of penal procedure, along with other texts in preparation, should profoundly modify the practice of the entire judicial system, and the State party had declared its willingness to incorporate the Convention in its domestic law. The report nevertheless gave no indication of how the Convention was applied in practice or of what measures had actually been taken to combat torture.

36. Paragraph 8 of the report stated that the Supreme Court had adopted a declaration guaranteeing the rights of defence of suspects and accused persons, but made no mention of detainees. Were they permitted to consult a lawyer, to be examined by a doctor of their choice and to contact their families? Were they apprised of the reasons for their detention?

37. The new Constitution expressly forbade torture and other cruel or degrading treatment, a good point of departure; the definition of torture contained in article 1 of the Convention should, however, be incorporated in Armenian law, which should furthermore stipulate that any act of torture and any complicity in such acts were punishable and would give rise to compensation. Armenia was obliged to ensure that every allegation of torture was thoroughly investigated and the results made public, and that those who committed acts of torture were brought to justice.

38. The Committee had received numerous reports from various sources, including Amnesty International, which attested to the ill-treatment of detained persons and stated that persons awaiting trial were barred from all contact with their families and that many presumed victims had admitted to fearing reprisals if they filed a complaint. It had even been reported that detained persons had been mistreated in the offices of the Department of State for National Security. Could the Armenian delegation provide clarifications on those cases?

39. The interesting initial report of Armenia attested to the willingness of that country to ensure respect for human rights.

40. Mr. CAMARA, associating himself with earlier questions said that clarification would be useful concerning paragraph 5 of the report, which stated that citizens could invoke the provisions of the Convention before the courts and administrative bodies. That universal principle having been established, it would be useful to know how it was implemented in practice and by what means an individual could invoke an international instrument before the courts. Had such cases arisen and, if so, what decisions had been rendered?

41. Mr. GONZALEZ POBLETE welcomed the opportunity to consider the report of a country in transition. It was the intention of the Committee to offer not criticisms, but recommendations regarding the gaps that needed filling in that initial phase.

42. The aim of articles 5, 6, 7 and 8 of the Convention was to establish effective international cooperation to ensure that torturers could find no shelter from the law anywhere in the world, and were prosecuted regardless of their whereabouts. The report failed, however, to explain clearly in what way Armenian legislation ensured that prosecutions would be instituted across national borders. The Code of Penal Procedure contained no provisions concerning extradition, since such procedures were governed by bilateral treaties. In his view, national legislation must expressly stipulate that torture, like other serious breaches of international humanitarian law, were extraditable offences, whether or not there existed a bilateral extradition treaty between the parties concerned. Additional information would be useful concerning the possibilities for international prosecution under Armenian law.

43. Mr. ZUPANCIC, recalling that Armenia was at a delicate stage in the transition to a more democratic system stressed that, generally speaking, acts of torture were committed in the context of the judicial process, during the preliminary investigation conducted by the police. Preferring to formulate Mr. Burns' question concerning habeas corpus in a manner that was both more precise and better adapted to the Armenian legal system, he inquired whether the Constitutional Court was empowered to hear individual complaints of human rights violations that contravened the Constitution, or whether it dealt solely with theoretical issues. In other words, could the Constitutional Court hear specific cases and could detained persons awaiting trial apply to it? In cases of that kind, many constitutional courts required the exhaustion of all other remedies. Certain eastern European constitutional courts would not hear such complaints until a final decision had been rendered, while others went so far as to allow persons awaiting trial to bring their cases before them once the judicial inquiry had been opened. If the Armenian Constitutional Court could in fact be seized at an early stage, the decisions of the plenary Supreme Court discussed in paragraph 59 of the report notwithstanding, had it ever ruled for example on the treatment of detained persons or the length of the detention?

44. It would also be useful to know whether the Constitution stipulated that no person could be obliged to testify against himself. If such was indeed the case, the interpretation of article 56 of the Code of Penal Procedure contained in paragraph 58 of the report was too broad. Further clarifications concerning article 56 would be useful, especially as to whether that provision was widely applicable, in particular in cases where confessions may have been extracted by torture.

45. Mr. YAKOVLEV commended Armenia for its efforts to bolster respect for human rights, and in particular those embodied in the Convention against Torture. Paragraph 17 of the report indicated that the Public Prosecutor of the Republic was empowered to sign extradition agreements with the prosecutors of other States. Was it possible to appeal against those decisions? What safeguard existed to ensure that those extradition agreements were not in violation of the provisions of the Convention?

46. With regard to article 6 of the Convention, paragraph 27 of the report indicated that significant revisions to the Code of Penal Procedure were in preparation, and that plans were under way to combine the investigatory services of the Department of Public Prosecutions, the Ministry of Internal Affairs and the Department of State for National Security into a single government committee. It was also envisaged that examining judges would no longer form part of the judiciary but would act as members of the body competent to conduct preliminary investigations: clarifications would be welcome on both the functions of such investigators and on the new provisions as a whole. The delegation might describe what obstacles, if any, it had encountered in carrying out its far-reaching reform, cited in paragraph 30 of the report, of the investigation procedure and of the subsequent stages of the penal procedure.

47. Mr. PIKIS inquired whether a procedure existed whereby a detained person or a third party could either confirm or challenge the lawfulness of detention. It would also be useful to know whether, in cases where it was established that a person had been tortured, his detention became illegal. Was the right of an accused person not to testify against himself explicitly recognized and, if so, at what stage in the process was he advised of that right?

48. In the context of Armenia's reform of its penal procedure, it seemed that a strict division of powers between the public prosecutor and the courts had been established; clarifications would be welcome. Did there exist a procedure by which the authorities automatically launched an investigation when international organizations made allegations of torture and, if so, what was the usual outcome of such allegations?

49. The CHAIRMAN associated himself with the questions voiced by other members of the Committee. He thanked the Armenian delegation for its attention, and invited it to reply to the questions raised at the 246th meeting.

50. The Armenian delegation withdrew.

The meeting was suspended at 12.30 p.m. and resumed at 12.40 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 6)

51. Mr. BRUNI (Secretary of the Committee) drew the attention of members to the notes to agenda item 6 (CAT/C/35). Information on the submission of reports was also provided in documents CAT/C/5, 7, 9, 12, 16/Rev.1, 24, 28/Rev.1 and 32/Rev.2, which contained lists of those States parties due to have submitted their initial report between 1988 and 1995. The lists of States parties due to have submitted their second periodic report between 1992 and 1995 appeared in documents CAT/C/17, 20/Rev.1, 25, 29 and 33. The list of States due to submit their third periodic report in 1996 appeared in document CAT/C/34.

52. Of the initial reports due between 1988 and 1996, 61 had been submitted and 28, or just less than a third, had not been received; 12 of the States

parties in question were already more than three years late: Uganda and Togo, whose reports had been due in 1988; Guyana, in 1989; Brazil and Guinea, in 1990; Somalia, in 1991; Estonia, Venezuela, Yemen and Yugoslavia, in 1992; and Benin and Bosnia and Herzegovina, at the end of April 1993. Those States had already received between 3 and 12 reminders, depending on the length of the delay. Moreover, at its eleventh session the Committee had requested Benin to submit a new version of its initial report, which had been considered too brief. Despite two reminders from the secretariat and a letter from the Chairman to the Ministry for Foreign Affairs, the report had not been received.

53. With regard to second periodic reports, 54 had been requested during the period from June 1992 to April 1996; 27 had been submitted and 27 were overdue. Of those, 10 had been overdue for more than three years namely, those of Afghanistan, Austria, Belize, Bulgaria, Cameroon, France, Luxembourg, Uganda, the Philippines and Togo. Five reminders had already been sent to States which should have submitted their reports in 1992. The United Kingdom had forwarded to the secretariat additional information regarding questions raised by the Committee during the consideration of its second periodic report at the previous session. By contrast, the additional information requested from Mexico, which should have been received in May 1994, and from Nepal, which should have been received in April 1995, had not arrived. Other States that had not sent the additional information requested of them were Canada, Cyprus, Paraguay and Poland.

54. It should be noted that a Chilean non-governmental organization, the Committee for the Defense of People's Rights, had sent a very detailed report concerning Chile's follow-up to the recommendations formulated by the Committee following its consideration of that country's second periodic report in November 1994. Although that report had not been transmitted to the country rapporteurs, Mr. Gil Lavedra and Mr. Lorenzo, who were no longer members of the Committee, it could be consulted in the secretariat's files. Lastly, the secretariat had received a note from the Peruvian Government regarding the appointment of a people's ombudsman on 3 April 1996. That note could be consulted in the files of the secretariat.

The meeting rose at 12.55 p.m.

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE PUBLIC* PART OF THE 246th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 30 April 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Armenia (continued)

* The summary record of the closed part of the meeting appears as document CAT/C/SR.246/Add.1.

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GE.96-15993 (E)

The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Initial report of Armenia (CAT/C/24/Add.4/Rev.1; HRI/CORE/1/Add.57)

1. At the invitation of the Chairman, Mr. Nazarian and Ms. Soudjian (Armenia) took places at the Committee table.

2. Mr. NAZARIAN (Armenia), replying to a question asked at the previous meeting, denied that an Armenian Minister had been attacked and beaten.

3. Ms. SOUDJIAN (Armenia) said that she would answer the other questions posed at the previous meeting. Although Armenian domestic legislation contained no definition of torture as such, the Constitution prohibited torture and any other cruel or degrading treatment or punishment. It also forbade submitting individuals to scientific experimentation without their consent.

4. Under the terms of the Penal Code, if the abuse of power was accompanied by violent or degrading treatment or the use of arms, it was punishable by imprisonment for a period of 3 to 10 years. Furthermore, any complaint lodged by a detained person must be communicated to the relevant authorities. Instructions from higher authorities could not be invoked as a justification for torture. No statistics existed concerning torture by persons in official positions.

5. If a discrepancy emerged between the provisions of domestic legislation and those of an international treaty to which Armenia was a party, the international treaty took precedence. Many of the terms of such international human rights instruments had, in fact, been incorporated in the Constitution; she was confident that more would eventually be written into law. In that connection, it should not be forgotten that Armenia was in the midst of a transition period. No cases had arisen in which an accused person had invoked the terms of an international convention before the Armenian courts. Under no circumstances was the Armenian President empowered to block the implementation of domestic legislation.

6. If a detainee died after torture, the charge was murder with aggravating circumstances. The Penal Code required judges to adhere to set limits on the duration of pre-trial detention and the term of imprisonment. The concern expressed regarding the length of police custody arose from a typographical error in the report: the period of police custody could be extended to 3 days, not 30. The Constitution clearly established the terms for an appeal against conviction.

7. The independent human rights and democracy centre established in October 1995 had undertaken a broad, vigorous information campaign. The functions of that centre included the distribution of pertinent information to lawyers, doctors, and others who dealt with detainees, and the preparation of educational and training programmes.

8. Every person had the right to legal defence from the time his or her detention began. Although no specific legislation regulated a detainee's access to a lawyer, the accused could in fact meet his counsel at any time. All persons had the right to legal assistance; under certain circumstances, such assistance being provided free of charge. Prisoners were also guaranteed the right to be treated by a doctor.

9. Although legislation on compensation and rehabilitation was still in the drafting stage, a law addressing the matter of compensation for the victims of political repression had already gone into effect. Under its terms, for example, persons illegally imprisoned during the repression of the 1930s were entitled to double ration vouchers. In addition, if an individual was imprisoned for a crime and later found to be innocent, he was entitled to financial compensation to an extent of not less than the official wage covering the period of his sentence. Armenia was also in the process of establishing a system of medical rehabilitation centres.

10. Her Government was unable to give a precise date for the completion of the draft penal code and the draft code of penal procedure. It was hoped that work on those instruments would be concluded within the next few months.

11. Concern had been expressed about the independence of the judiciary. The conduct of judges was not, in fact, monitored. Under the terms of the new Constitution, the President had extended the tenures of both local and regional judges by six months, and could, in certain cases, appoint judges for tenures of three years by special decision.

12. Armenia had ratified the international instruments relating to refugees, and relevant national legislation was in being. Her Government was working energetically to assist refugees, and in particular to find them work. UNHCR had of course been active in Armenia for a number of years.

13. No cases of expulsion of the kind described by one expert had occurred in Armenia, and no regulatory mechanisms therefore existed.

14. Recent legislation concerning religious organizations established the separation of church and State, forbade the State to oblige citizens to adopt a particular religion and permitted religious organizations to attain the status of legal persons. The Constitution provided that all citizens of Armenia, regardless of nationality, race, sex, language, social background, wealth, and religious or political views, enjoyed the rights, freedoms and obligations set forth therein.

15. Although legislation concerning the Constitutional Court had been passed in November 1995, the Court was not yet functioning. Complaints lodged by individuals were indeed assessed in the context of a breach of law, and corresponding offences duly prosecuted.

16. A question had been asked about the consolidation of the Office of the Government Procurator and the courts. The role of the Government Procurator

had been curtailed by 25 per cent, and the courts were responsible for issuing arrest warrants. The State security branch of the armed forces fell within the competence of the Government Procurator, and its members were accordingly subject to civil law.

The public meeting was suspended at 4.05 p.m. and resumed at 5.20 p.m.

17. Mr. SØRENSEN (Country Rapporteur) read out the conclusions and recommendations of the Committee on the initial report of Armenia.

"Conclusions and recommendations of the Committee against Torture

ARMENIA

The Committee considered the initial report of Armenia (CAT/C/24/Add.4/Rev.1) at its 245th and 246th meetings on 30 April 1996 (see CAT/C/SR.245 and 246) and adopted the following conclusions and recommendations.

A. Introduction

The Committee welcomes the report of Armenia, together with its core document, and the valuable oral introduction given by the delegation of Armenia.

B. Positive aspects

The Committee welcomes the integration of the prohibition against torture into the newly adopted Constitution. Similarly, it welcomes the creation of a Human Rights Commission and the new agreement between Armenia and the International Committee of the Red Cross (ICRC), which gives the latter the right to visit Armenian prisoners.

The Committee is encouraged by the information given to it about the trends in reforming the legal system, where it seems that consideration for human rights has a high priority.

C. Factors and difficulties impeding the application of the provisions of the Convention

The Committee realizes the very difficult economic situation existing in Armenia, together with the difficulties involved in any transition from one system of governance to one that is democratically based. The Committee also acknowledges the particular consequences of Armenia's unstable border situation.

The Committee has tried to take these matters into consideration in formulating its conclusions and recommendations. But the Committee emphasizes that these conditions can never provide a justification for failure to comply with the terms of the Convention.

D. Subjects of concern

It is of concern to the Committee that Armenia has not seen fit to create a specifically defined crime of torture. It is not clear that the provisions of article 2 of the Convention are adequately reflected in the domestic law of Armenia.

The Committee is concerned that it is not clear that the laws, regulations and practice in Armenia effectively prohibit a person from being sent back to a country where he or she runs the risk of being subjected to torture.

The Committee has doubts about the effectiveness of the provisions for the safeguarding of persons in police custody.

Finally, the Committee is concerned about the number of allegations it has received with regard to ill-treatment perpetrated by public authorities during and after arrest.

E. Recommendations

The Committee recommends that a definition of torture in conformity with the definition appearing in article 1 of the Convention be inserted into Armenian domestic legislation as a separate type of crime.

The Committee emphasizes that orders received from a superior implying the perpetration of an act of torture are illegal and should be sanctioned under criminal law. In addition, they cannot be considered by the person receiving such orders as justification for having committed torture. This should be clearly incorporated into domestic law.

The Committee recommends that legal and practical measures be taken by the Armenian authorities to guarantee that a person is not expelled, returned (refoulé) or extradited to another State where there are substantial grounds for believing that he will be in danger of being subjected to torture.

The Committee understands that the Government of Armenia is presently developing the jurisdiction of the Constitutional Court; the Committee recommends that the Government consider the possibility of establishing an effective and reliable judicial review of the constitutional rights of those who are illegally detained.

The Committee further recommends that the Armenian authorities give high priority to the training of the personnel enumerated in article 10 of the Convention.

The Committee recommends that the allegations of ill-treatment which were brought to its attention be duly investigated, and that the result of such investigations be transmitted to the Committee."

18. Mr. NAZARIAN (Armenia), having thanked the Committee for its efforts, said that all the comments made would be taken into account and the necessary changes made wherever possible.

19. The CHAIRMAN said that the Committee appreciated the Armenian delegation's frankness and spirit of cooperation. He hoped that the country's transition to democracy would take place under the best possible circumstances.

The meeting rose at 5.40 p.m.

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and Other Cruel, Inhuman
or Degrading Treatment
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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE 247th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

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GE.96-16020 (E)

The meeting was called to order at 10.10 a.m.

STATEMENT BY THE HIGH COMMISSIONER FOR HUMAN RIGHTS

1. Mr. AYALA-LASSO (High Commissioner for Human Rights) congratulated the members of the Committee who had been elected or re-elected at the fifth Meeting of States Parties to the Convention and assured them, as well as the other members of the Committee, of the Secretariat's support in the exercise of their mandate, which had become more delicate due to the budget crisis, which, far from diminishing, was becoming more acute. In fact, the 1996-1997 budget the General Assembly had adopted for the Organization was lower than that proposed by the Secretary-General. Moreover, the budget of the Centre for Human Rights had once again been reduced, by an amount of US$ 2.9 million, leaving the Centre with an annual budget of about US$ 22 million. It would therefore be necessary to reduce not only the number of posts in the Centre for Human Rights but also some programmes. The practical consequences of that reduction had not yet been determined, but were expected to be substantial. Those budgetary difficulties might affect the Committee against Torture, which, for example, might no longer be able to count on having documents in all its working languages at future sessions.

2. There was another crisis which would have a more specific impact on the Committee against Torture, namely that affecting the United Nations Voluntary Fund for Victims of Torture. At its fourteenth session, in May 1995, the Fund's Board of Trustees had recommended contributions of the order of US$ 2,700,000 for 1995 - although the requests for assistance amounted to more than US$ 5,500,000 - and, in April 1996, the total contributions received amounted to only about US$ 1,062,000, which was far from sufficient to meet the requests for aid, which already amounted to US$ 6 million. That severe financial crisis had prompted the Fund's Board of Trustees to appeal urgently to Governments for further contributions for 1996 so that the assistance programmes for victims of torture would not be jeopardized. At the fifty-second session of the Commission on Human Rights, he had appealed to all Governments to urge those which had pledged financial support to honour their pledges and to urge those who had not yet done so to contribute to the Fund.

3. During the present year, Mr. Nigel Rodley, the Special Rapporteur of the Commission on Human Rights on the question of torture, had received an impressive number of communications concerning torture. In his report to the Commission, Mr. Rodley stated that he had sent 113 urgent appeals to 43 Governments concerning 410 individuals and several groups of persons who, it was feared, might be subjected to torture. He had also transmitted 55 letters to 48 Governments concerning 750 cases of torture. The information received, containing a more general analysis of the phenomenon of torture, had also been brought to the attention of the Governments concerned. Forty-one States had sent replies to the Special Rapporteur on the subject of 330 cases that had been reported in previous years.

4. The members of the Committee would note that the Working Group of the Commission on Human Rights assigned to consider the draft optional protocol to the Convention against Torture had submitted the report on its November 1995 session to the Commission. The Group felt that it had made progress in its work and thought that it would be able to draft an extremely useful text

within a reasonable period of time. He concluded by once again wishing the Committee every success in its work and reaffirmed that it would enjoy support from the Centre for Human Rights as a whole and from himself in particular.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Senegal (CAT/C/17/Add.14; HRI/CORE/1/Add.51)

5. At the invitation of the Chairman, Mr. Youssoupha Ndiaye, Mr. Amadou Diop, Mrs. Maîmouna Diop, Mr. Mamadou Lamine Fofana, Mr. Mandiougou Ndiaye, Mr. Ibou Ndiaye, Mr. El Hadji Abdoul Aziz Ndiaye (Senegal) took places at the Committee table.

6. The CHAIRMAN welcomed the Senegalese delegation and invited it to submit the second periodic report of Senegal (CAT/C/17/Add.14).

7. Mr. NDIAYE (Senegal) said that Senegal had always been regarded as a land of tolerance and humanism, a land of asylum where the protection of human dignity was deeply rooted in its philosophical and humanitarian tradition. The country's modern history began in 1960, following independence, but was actually only a continuation of the civilized values of which the Senegalese peoples were the legitimate heirs and faithful custodians. In a philosophy under which man was a sacred being, respect for life - and its corollary, namely physical and moral integrity - was the natural precursor of the rule of law, which prohibited any debasement of human beings and therefore outlawed any form of torture.

8. Senegal's fundamental statutes, beginning with the Constitution, were based on those sacrosanct principles. The Constitution affirmed, in a very forceful manner, that the State had a duty to protect and respect the human person. Senegal believed in the values and principles that constituted the rule of law, based on the separation of powers, which was an absolute reality in Senegal. However, that separation of powers must also be accompanied by full freedom of the press, which was another reality in Senegal, and by other mechanisms that demonstrated the effective participation of civilian society in a country's political life. In that context, he mentioned freedom of association, which was total, as well as the existence of a large number of non-governmental organizations which enjoyed full freedom of action, and the existence of the High Council for Radio and Television and the appointment of the ombudsman (Médiateur de la République).

9. It must be strongly affirmed that there were no gross and large-scale violations of human rights in Senegal, nor was there any systematic practice of torture, which was impossible by virtue of Senegal's history and philosophical tradition. If Senegal had not been a State subject to the rule of law, it would not have signed all the conventions and covenants which it had actually ratified, nor would it have scrupulously fulfilled its obligations under those international instruments. In that connection, he apologized to the Committee for the fact that the Senegalese delegation had been unable to attend the previous session, at which Senegal's report had been scheduled for consideration.

10. Being determined to ensure that its obligations were scrupulously respected, the Senegalese Government was in the process of modernizing the legal system. That involved a thorough reform of criminal law, taking into account the comments made by various United Nations committees and also some criticisms voiced by the press. Bodies had already been established for that purpose and the President of the Republic, who attached particular importance to that reform, had issued precise directives on that subject. Against that background of comprehensive reform, the Senegalese Human Rights Committee, over which he (Mr. Ndiaye) presided, would also be undergoing far-reaching changes in the light of the comments made during United Nations regional seminars on the effective promotion of human rights. The Senegalese authorities had already submitted their second periodic report to the African Commission on Human Rights and, on that occasion, had invited anyone who wished to do so to visit the country in complete freedom, something that would make it possible to verify the openness and transparency that prevailed there

11. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) thanked the Senegalese delegation for its second periodic report (CAT/C/17/Add.14), as well as the basic document (HRI/CORE/1/Add.51) and the oral presentation. She welcomed the improvement in the human rights situation in the country and, in particular, the establishment of an office for human rights at which any citizen could lodge a complaint if his rights were violated.

12. With regard to the general legal framework for the application of the Convention (paras. 1 to 20 of the report), it would be useful to have information on the three new bodies established to replace the Supreme Court, including, in particular, details concerning the functions and powers of the Constitutional Council, the composition of the Council of State and the ways in which the impartiality of the judiciary could be guaranteed. The question of functions and method of appointment likewise arose in regard to the ombudsman (Médiateur de la République), a post that had been created in 1991.

13. It was regrettable that, in spite of the promises made by its representative during the presentation of the previous report, Senegal had not yet incorporated in its national legislation a definition of torture in conformity with article 1 of the Convention. However, it was not obligatory for that definition to appear in the Constitution and the Committee welcomed the fact tnat plans had been made to include it in the bill of law amending the Penal Code, which was in the process of being adopted. In that connection, she inquired whether the Penal Code, which already penalized physical torture, also penalized mental torture.

14. Paragraph 28 of the report referred to "detailed regulations" governing the Executive's handling of exceptional circumstances, which law enforcement agencies might use as a pretext for engaging in acts of torture. However, article 2, paragraph 2, explicitly stipulated that no exceptional circumstances whatsoever could be invoked as a justification of torture. Moreover, paragraph 3 of the same article likewise stipulated that an order from a superior officer or a public authority could not be invoked as a justification of torture. Although the Senegalese courts unanimously held that no order from a superior officer could justify the practice of torture (para. 28 of the report), that did not constitute an adequate safeguard. It

was necessary to know whether a particular legal provision guaranteed the application of article 2, paragraph 3, of the Convention and whether there was an enactment under which the practice of torture was explicitly prohibited.

15. It was apparent from paragraph 29 of the report that Senegalese legislation placed Senegalese nationals and foreigners holding a residence permit on an equal footing in respect of freedom of movement and choice of a place of residence throughout the national territory, but she would point out that the aim of article 3 of the Convention was to protect all foreigners, and particularly those who did not hold a residence permit, against expulsion, return or extradition to another State where they might be in danger of being subjected to torture. She therefore inquired whether an amendment was planned, within the context of the reform of the legal system, with a view to protecting foreigners without a residence permit.

16. Under article 4 of the Convention, each State Party should ensure that all acts of torture constituted offences under its criminal law and that the same should apply to an attempt to commit torture and to an act by any person which constituted complicity or participation in torture. Did the Senegalese Penal Code prescribe penalties for attempts to commit torture or for complicity or participation in acts of torture? Given the fact that, under article 666 of the Code of Criminal Procedure, if an offence by a Senegalese national against an individual was committed abroad, the victim must file a complaint or the offence must be officially reported by the authorities of the State concerned (para. 40 of the report), the question arose as to whether the said offences included acts of torture.

17. With regard to the application of article 6 of the Convention, she wondered whether, under Senegalese law, international relations between States might be accorded precedence over the prevention and punishment of the crime of torture, since it was stipulated that, when a person who had committed an offence abroad was present in Senegalese territory, he could be arrested only at the request of the other State (para. 44 of the report). Paragraph 46 further indicated that a fugitive sought by another State enjoyed all the guarantees concerning the right of defence since he could be counselled by a lawyer, although it was not specified whether he would be entitled to legal aid if he was indigent.

18. As to the application of articles 9 and 10 of the Convention, she welcomed the fact that Senegal was one of the African countries which afforded the greatest measure of mutual assistance in judicial matters, especially in terms of prosecution. The Senegalese public authorities had recently incorporated the question of human rights in the training programmes for various categories of law enforcement personnel and that practice set a good example for many countries, even in Europe.

19. Concerning police custody, she wished to know the maximum period of time by which police custody could be extended beyond the first 48 hours (para. 59 of the report, art. 11 of the Convention) and how many times a pre-trial detention order issued by an examining magistrate could be renewed.

20. According to paragraph 73 of the report, the application of article 12 of the Convention was "encountering serious obstacles in Senegal and this has led to much debate between the authorities of the country, on the one hand, and the United Nations human rights monitoring bodies and some non-governmental organizations, on the other". It seemed that, in that regard, international law conflicted with national law even though article 79 of the Constitution stipulated that any international treaty took precedence over national law. The legal solution was therefore clear: international law should take precedence over the amnesty laws adopted between 1988 and 1993 (para. 83 of the report). In that connection, she wished to know whether those laws ranked as constitutional. At all events, the controversy seemed to be of a political rather than a legal nature.

21. She commended the frankness of the Senegalese authorities, which had recognized (para. 103 of the report) that the list of victims of torture, who had filed complaints and won their cases in the courts, was long. With regard to the application of article 15 of the Convention, she inquired whether there were any provisions in Senegalese law under which evidence obtained under torture was regarded as null and void. Moreover, articles 106 et seq. of the Penal Code, under which infringements of an individual's freedom or safety committed by officials were punishable by terms of imprisonment and fines, were not sufficient to guarantee the application of article 16 of the Convention.

22. In conclusion, she wished to know what progress had been made in regard to the procedure needed to enable the State party to make the declaration provided for in article 22, paragraph 1, of the Convention.

23. Mr. REGMI (Country Rapporteur) pointed out that, since the submission of the initial report of Senegal, the Committee had not received sufficient information on the legislative, administrative, judicial and other measures taken to prevent any act of torture in its territory. Like Mrs. Iliopoulos-Strangas, he noted that plans had been made to incorporate the definition of torture in the future revised Penal Code and therefore called upon the Senegalese Government to take the necessary action to ensure rapid adoption of that draft Code so that all acts of torture would constitute criminal offences.

24. With regard to the right of a victim of an act of torture to obtain redress and compensation, including as full rehabilitation as possible, and the entitlement of the victim's dependants to compensation in the event of his death, as provided for in article 14 of the Convention, paragraphs 104 to 107 of the periodic report showed that, although legal provisions did exist in that field, they did not cover all those eventualities. It would be helpful if Senegal could provide the Committee with statistical data showing the number of victims of acts of torture and the number of victims who had benefited from compensation and rehabilitation, as well as the maximum amount of compensation payable to the relatives of a victim of torture in the event of his death and the proportion of victims of torture who had not lodged a complaint, and the reasons for their failure to do so. The information on those points should be as detailed as possible.

25. Article 2, paragraph 2, of the Convention stipulated that no exceptional circumstances whatsoever could be invoked as a justification of torture. Although the Senegalese Government was faced with an armed separatist movement in Casamance in the southern part of the country, its desire to safeguard national unity and the integrity of the State could not justify the systematic resort to torture by the security forces, with full impunity, even if some members of the MFDC, the separatist movement, had themselves committed serious abuses against the civilian population of that region. Numerous sources, and particularly the Amnesty International report dated 28 February 1996, had mentioned acts of torture committed not only against Casamance separatists but also against individuals held in various places of detention. According to those sources, the Senegalese security forces resorted to torture, with full impunity, in order to extract confessions from persons accused of ordinary offences or persons suspected of political offences, particularly in connection with the Casamance crisis. In that regard, he mentioned the names of Mody Sy, who had been subjected to electric shock torture in May 1993 at the gendarmerie headquarters, Ramata Gueye, Lamine Samb, who had died in detention in February 1994 as a result of torture, and Hamara Diedhou, who had died under torture without any autopsy being carried out even though a physician had noted that his death was due to a cerebrocranial trauma probably caused by a blunt object. The case of Mareme Ndiaye, which was also mentioned in the Amnesty International report, was particularly revealing. After being arrested in September 1994 for trafficking in stolen goods, she had first been tortured before being released; on returning the following day to lodge a complaint, she had been once again arrested, dragged down to the beach and raped by several members of the security forces. One year later, five police officers, including a police inspector, had been arrested but the inspector had been released on bail, which constituted a further flagrant case of impunity. As indicated in the Amnesty International report, the widespread resort to torture was facilitated by the rules on police custody, under which the police could detain a person in solitary confinement for a maximum period of four days, with the possibility of an eight-day extension, if the person was suspected of attempting to violate State security. In fact, most cases of torture occurred during that period, when persons under arrest did not have access to a lawyer or even a medical practitioner. The Committee had no doubt that the Senegalese Government would endeavour to remedy that situation.

26. Concerning Casamance, in addition to the systematic resort to torture and hundreds of arrests, the various sources mentioned detentions without trial, extrajudicial executions and disappearances attributed to the security forces, many victims being named in the Amnesty International report. Although the situation facing the Senegalese Government in Casamance was extremely difficult, repression, oppression, torture and intimidation were hardly likely to produce the desired results. A responsible Government should act in a responsible manner and seek political means to settle a political problem. The Committee had no doubt that the Senegalese Government was endeavouring to protect human rights and apply the Convention and the highly informative second periodic report that it had submitted gave cause to hope for a brighter future.

27. Mr. SØRENSEN noted that paragraph 28 (d) of the report referred to the question of due obedience as a justification of torture. The Senegalese Government should consider amending article 315 of the Penal Code, which was

frequently invoked by policemen to justify acts of torture even if the Senegalese courts unanimously held that no order issued by a superior could exonerate the persons guilty of such acts. Paragraph 103 of the periodic report clearly showed that there was a problem of torture in Senegal and ways had to be devised to remedy the situation. A welcome development in that regard was the fact that the Senegalese Government had decided to incorporate the prohibition of torture in the programmes at various training colleges (paras. 56 and 57). However, there was a need to go even further by endeavouring to train health personnel and, in particular, medical practitioners who were called upon to treat and rehabilitate victims of torture but who, unfortunately, were also sometimes involved in acts of torture.

28. Although paragraphs 104 to 107 of the second periodic report referred to compensation and rehabilitation, there was no mention of moral reparation, i.e. the State's recognition of its errors. Moreover, in Senegal, only the victim could bring an action even though the victims of torture were usually not in a position to do so. In that connection, it would be interesting to know whether, when a criminal investigation established that a police officer had been guilty of an act of torture, the judge was automatically empowered to award damages to the victim of the offence or whether the victim needed to bring an action for damages, in which case that provision would need to be amended. With regard to medical rehabilitation, the Senegalese Government, having admitted that a problem of torture did exist, might consider making a modest contribution to the United Nations Voluntary Fund for Victims of Torture. It would thereby actually be contributing to the rehabilitation of victims of torture while, at the same time, according a certain degree of moral reparation to the Senegalese victims of torture.

29. Mr. BURNS expressed surprise that the Penal Code covered the practice of torture during the lawful arrest or detention of persons but made no provision for cases of arbitrary arrest or detention, as seemed to be implied in paragraph 3 of the report. If that was actually the case, it would be helpful to have clarification in that regard. Although torture was not explicitly defined in Senegal's Constitution and Penal Code, the report indicated that, in practice, the courts convicted the perpetrators of acts of torture. Accordingly, it would be helpful if the Committee could be provided with the definition of torture as it appeared in the draft revised Penal Code and as it was interpreted in case-law. Paragraph 39 of the report stated that a criminal court was competent to hear all cases involving serious offences committed abroad but, in the absence of a legal definition of torture, it might be wondered on what basis Senegal exercised universal jurisdiction under the terms of article 5, paragraph 2, of the Convention.

30. Since the head of the Senegalese delegation was the President of the Senegalese Human Rights Committee, it would be interesting to hear information from him about that body, particularly its origin and its functions.

31. In its report, Amnesty International affirmed that a person could be held in police custody for up to four days without contact with the outside world. Everyone knew that it was during that period that most acts of torture occurred and it would therefore be useful to know whether, and for how long, a person could actually be held in police custody without contact with a lawyer,

a member of his family or a medical practitioner. Amnesty International also referred to extrajudicial executions and disappearances for which military personnel were allegedly responsible. Extrajudicial executions were contrary to article 16 of the Convention against Torture even if they did not, strictly speaking, constitute acts of torture. He invited the Senegalese delegation to refute or confirm those allegations.

32. The concept of the rights and obligations of citizens seemed excessively legalistic in Senegal since, according to the report, an investigation could be undertaken only on the basis of a complaint from the victim. The question therefore arose as to whether, in the event of the victim's death and in the absence of relatives, the Government Prosecutor's Office would be unable to prosecute persons accused of acts of torture. It would be interesting to know the results of the investigations carried out in the two cases mentioned in paragraph 93, as well as the average duration of an investigation in cases of that type.

33. With regard to the conflict between international law and internal law, to which reference had been made in paragraph 100 of the report, it was sufficient to point out that the Human Rights Committee had recently expressed the view that no domestic legal provision could be invoked to exonerate agents of the State from responsibility for infringements of human rights and thereby grant them impunity. The Committee against Torture must likewise refuse to accept domestic reasons, even of a political nature, as justification for acts of torture.

34. Mr. PIKIS wished to know what measures had been taken in Senegal to ensure the independence of the judiciary, particularly if judges were appointed for life, by whom they were so appointed and what powers they exercised. Again, how was the Senegalese Government responding to the comments of independent bodies and international organizations seeking to promote respect for human rights throughout the world, particularly the reports of Amnesty International and other organizations of that type? Did the State party have institutions responsible for studying such reports and cooperating with those organizations in order to clarify the matters that they raised, thereby ensuring effective protection of human rights?

35. The second periodic report seemed to indicate that actions for damages must be brought before a criminal court, thereby posing the question as to whether such actions could also be brought before a civil court and, if not, for what reasons. With regard to legal aid, it would be helpful to know whether there was a fund to which victims of torture could apply and secure the means needed to engage the services of a lawyer to bring a public or private action.

36. He would welcome details about the precise functions of the ombudsman, whose role was apparently comparable to that of the French ombudsman. Had he already received complaints concerning torture and, if so, from which bodies and in what circumstances, and had cases of torture been settled out of court in that way? Were the courts empowered to verify whether the conditions justifying the proclamation of a state of emergency were met, or was that question left to the exclusive discretion of the Parliament? He also requested details of the powers and the composition of the disciplinary board

mentioned in paragraph 38 of the report and wished to know why members of the police force and the gendarmerie could not be prosecuted before an ordinary court.

37. He attached the greatest importance to the rules applicable to the interrogation of detainees and suspects and inquired whether the Code of Criminal Procedure or any other text incorporated such rules; if that was the case, he would like to know their content. In particular, could suspects refuse to answer questions and were they informed of their rights before the interrogation, particularly their right to remain silent?

38. Finally, concerning paragraph 108 of the report, it was important to know who bore the onus of proof or, in other words, who was required to produce the evidence in court.

39. Mr. ZUPANCIC said he understood that the Senegalese system of criminal procedure was based on Roman law. Consequently, it was surprising that a criminal action could not be brought unless the victim had filed a complaint. In fact, under article 5 of the Convention, the States parties were required to take such measures as might be necessary to establish their jurisdiction over the offences referred to in the Convention and, in Roman law, in such cases criminal proceedings were automatically instituted by the State as soon as torture was suspected. A complaint by the victim should not be a sine qua non for instituting proceedings.

40. Article 15 of the Convention excluded the possibility that a statement made as a result of torture might be invoked as evidence, particularly since such statements could not be used at any stage of the proceedings. However, it was stated in paragraphs 108 and 109 of the report that evidence thus obtained was of no value in court proceedings and that the courts were wary of confessions, which were always a suspect form of evidence. Although all that was perfectly correct, it was not what was meant by article 15 of the Convention, which stipulated that, as a matter of principle, that type of evidence must not be invoked under any circumstances. Paragraph 109 of the report indicated that a deposition which the person concerned had refused to sign, or which he had signed as a result of threats by the investigators, was null and void; in many countries which applied Roman law such a document would be purely and simply removed from the case file and the court would not take cognizance of it. He wished to know what was meant by "the deposition is null and void".

41. Mr. YAKOVLEV, for his part, also stressed the need to leave scope for instituting proceedings even in the absence of complaints by the victims. It was crucially important to be able to prosecute on the basis of reliable information even if no complaint had been filed, since the victims, being terrorized, might remain silent. One should not overlook the fact that the Government Prosecutor's Department had an obligation to ensure that any allegation of torture was immediately investigated in a thorough and impartial manner.

42. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur), returning to the question of the legitimacy of complaints, asked whether the victim of acts of torture was the sole person entitled to file a complaint or could that also be done by his successors or even by a non-governmental organization?

43. The CHAIRMAN thanked the Senegalese delegation for its attention and invited it to reply to the Committee's questions at the 248th meeting.

44. The Senegalese delegation withdrew.

The meeting was suspended at 12.25 p.m. and resumed at 12.40 p.m.

AMENDMENTS TO THE RULES OF PROCEDURE OF THE COMMITTEE (agenda item 11) (CAT/C/XVI/Misc.1)

45. Mr. BRUNI (Secretary of the Committee) pointed out that the three proposed amendments appearing in document CAT/C/XVI/Misc.1 had been submitted to the Committee by Messrs. Burns, El-Ibrashi and Sørensen at the previous session.

46. Mr. BURNS said that those proposals had formed the subject of lengthy and heated discussions at which it had not been possible to reach a consensus. Since that approach had failed, he did not deem it advisable to reopen the debate at the present session.

47. Mr. YAKOVLEV said the discussions had been lively. However, at the present time the content of the three proposals seemed to be quite reasonable and conducive to solving numerous problems; the Committee should be able to adopt them without reservation.

48. Mr. SORENSEN said he thought that the question had been settled and did not need to be reconsidered.

49. Mr. PIKIS said that, as a new member of the Committee, he was unaware of the subject-matter of that discussion. For his part, however, he did not see how the amendments could be of any benefit, since the members of the Committee were elected in their personal capacity and by virtue of their commitment to the cause of human rights. To prohibit them from taking part in some debates would call their impartiality into question and would detract from the Committee's prestige. He was strongly opposed to the adoption of those amendments.

50. Mrs. ILIOPOULOS-STRANGAS recalled that, on the conclusion of the discussions on that question, a consensus had been found to be impossible. She thought that it had been agreed to resume the discussion at the present session.

51. Mr. CAMARA had not been a member of the Committee when the amendments had been considered and he wished to know more about the matter. At first sight, the proposed amendments seemed to make good sense; the members of the Committee should keep a low profile when their country's report was being considered, but it was not perhaps essential to formally exclude them from the discussions.

52. Mr. BURNS suggested that the discussion should not be taken further on a point which, after all, was not of capital importance, since the members of the Committee had the right to choose the course of conduct they deemed best.

53. At the request of the CHAIRMAN, Mr. BRUNI (Secretary of the Committee) gave a brief account of the background of the question and pointed out that, at its tenth session, the Committee had taken the view that, in the light of past experience, it might be advisable to improve the rules of procedure. The Secretariat had prepared informal documentation on the subject and, at its thirteenth session, in November 1994, the Committee had adopted amendments to rules 106 and 108 of its rules of procedure, which were annexed to the Committee's last report to the General Assembly (A/50/44). At its fifteenth session, the Committee had continued its consideration of other amendments to its rules of procedure and had adopted those concerning the inter-sessional powers and functions of the Chairman, as well as an amendment concerning the publication of the results of investigations undertaken pursuant to article 20 of the Convention. The procedure still needed to be improved in regard to the conduct to be observed by the Committee's members who were nationals of a State the case of which was being considered under the terms of articles 19, 20 and 22 of the Convention. Various proposals had been rejected and, after a lively discussion, the Committee had decided, on 24 November 1995, to defer consideration of that question to the present session. The text submitted in document CAT/C/XVI/Misc.1 contained the proposals that had been left pending at the fifteenth session.

54. Mr. GONZALEZ POBLETE said that the proposals contained in the document under consideration were perfectly logical and useful. Although the members of the Committee were independent experts, their candidature was submitted by Governments. The proposed rules were likely to strengthen their independence, since Governments would not be tempted to attempt to influence their nationals.

55. Mr. SØRENSEN pointed out that the Committee had several new members and, before taking a decision, it would be helpful for them to familiarize themselves with the Committee's work. He therefore proposed that the consideration of the proposed amendments to the rules of procedure that had been submitted in document CAT/C/XVI/Misc.1 should be deferred to the seventeenth session.

56. It was so decided.

The meeting rose at 1.05 p.m.

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 248th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 1 May 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Senegal (continued)

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.248/Add.1.

This record is subject to correction.

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GE.96-16024 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Senegal (continued) (CAT/C/17/Add.14)

1. At the invitation of the Chairman, the members of the delegation of Senegal took places at the Committee table.

2. Mr. NDIAYE (Senegal), replying to the questions of the members of the Committee, said that the Constitutional Council, of which he was Chairman, had been established in 1992 as one of the three courts that had replaced the Supreme Court (the other two being the Council of State and the Court of Cassation). Its five members were appointed by presidential decree for a non-renewable six-year term. They were drawn from the corps of superior judges, senior members of the legal profession and university law professors with at least 25 years' experience.

3. While the Court of Appeal was responsible for the supervision of elections, the Council heard disputes regarding the constitutionality of presidential and parliamentary elections. Its role as a constitutional watchdog consisted in ensuring that legislation enacted by the National Assembly was constitutionally sound. Referral to the Council in that connection could be made by the President of the Republic or by one tenth of the members of the Assembly. No act referred to the Council could be promulgated until an opinion on its constitutionality had been delivered.

4. The Council also had special jurisdiction in respect of the plea of unconstitutionality (exception d'inconstitutionnalité). Any party to a dispute before the Court of Cassation or the Council of State could challenge the constitutionality of the legislation being applied in the proceedings and have it referred to the Constitutional Council. The Council also fulfilled a subsidiary function as a court of conflicts, in the event that conflicts of jurisdiction arose between the Council of State and the Court of Cassation or between the executive and the legislature. No such cases had yet been referred to it.

5. The Senegalese Human Rights Committee had been set up in the 1970s, long before the United Nations had recommended the establishment of such bodies. Its responsibilities had been gradually extended so that it currently operated both as an adviser to the executive and as a mediator between the public authorities and the people. Its effectiveness as a defender and promoter of human rights had been enhanced through careful study and implementation of the recommendations of a series of regional seminars on national human rights committees convened by the United Nations. Training courses had been organized for the gendarmerie and the police force and a university-level Institute for Human Rights and Peace had been established. Grass-roots propagation of human rights ideals was undertaken by non-governmental organizations (NGOs) and an as yet limited number of schools.

6. The Council of State advised the Government on the legality of laws and regulations through a Consultative Assembly. It also had competence in matters of excess of jurisdiction and in administrative review proceedings. It was composed of two sections. Both the Council of State and the Court of Cassation, which was composed of three chambers, were expected to become increasingly active as the large amount of litigation in progress at lower levels of the judicial system worked its way up to the superior courts.

7. The ombudsman (Médiateur de la République) was appointed by presidential decree. His main role consisted in establishing a channel of communication between the authorities and individual citizens, so that disputes could be settled equitably without recourse to legal proceedings. Of the four to five thousand cases a year referred to the ombudsman, between one and two thousand were settled. He could therefore play an important role on behalf of victims of torture.

8. Mr. DIOP (Senegal) said that the monthly interministerial meeting on questions of human rights and torture had been instituted by the President of the Republic. The Interministerial Committee was composed of a member of the President's Office, the Legal and Diplomatic Advisers to the President, the Legal Adviser to the Prime Minister, representatives of the Ministries of Justice, the Armed Forces, the Interior, Health and the Environment, and a representative of the Human Rights Committee.

9. Technical questions were referred to a specialized subcommittee that reported to the plenary. The Interministerial Committee itself reported to the President of the Republic. The Senegalese delegation to the Committee against Torture had been enlarged on the basis of a recommendation by the Interministerial Committee and would report thereto on its return to Senegal.

10. There was ongoing cooperation between the Senegalese authorities and both governmental and non-governmental bodies operating in the field of human rights. They had recently responded to a report by the Department of State of the United States of America, giving detailed replies to all the questions asked. Ongoing contacts were maintained with Senegalese NGOs, which were provided with exhaustive information on relevant issues. As for international NGOs, his Government had recently received the report of Amnesty International, which was currently being studied. The Interministerial Committee would reply to all the points raised and the Committee against Torture would, if it so desired, be provided with a copy of the reply.

11. Mrs. DIOP (Senegal), replying to a question by Mr. Sørensen, explained that the declaration under article 22 of the Convention had been made, but not according to the procedure set out in paragraph 8. That situation would be rectified on her return to Senegal.

12. Training programmes were being extended to all medical personnel with the assistance of NGOs. To implement the United Nations resolution on the Decade for Human Rights Education, an extensive programme of instruction had been introduced. As doctors were, however, a key group in that they had to attest to instances of torture, priority was being given to their training. The third periodic report would show that action had been taken on the Committee's recommendations.

13. Before the current economic crisis, Senegal had always contributed to United Nations funds, especially those for the protection and promotion of human rights. Her delegation would therefore recommend to its Government that Senegal make a donation to the Voluntary Fund for Victims of Torture.

14. Mr. FOFANA (Senegal), replying to a question by Mrs. Iliopoulos-Strangas said that the independence of the judiciary was guaranteed by the Constitution, which likewise stated that judges had to comply with the law in carrying out their duties. As far as their careers were concerned, judges were appointed by presidential decree on the recommendation of the Judicial Service Commission. The latter was also the disciplinary body of the judiciary, in which capacity it was presided over by the head of the appropriate division.

15. He then explained that, as stated in the report (CAT/C/17/Add.14, para. 28) exceptional circumstances could never be pleaded as justification for torture and outlined the relevant provisions regulating emergency powers under article 47 of the Constitution, namely, in states of emergency and siege.

16. Turning to the protection of aliens present in Senegalese territory without a lawful residence permit, he pointed out that the report had described the procedure for granting asylum and protection to persons in danger of torture or persecution and said that it covered such aliens.

17. Legal aid was governed by colonial legislation dating from 1911, which provided for the establishment of a Commission empowered to decide whether to grant such aid to persons appearing before a regional criminal court.

18. The State was liable to pay compensation to persons who had been tortured by members of the police force if the offender was not able to do so.

19. With regard to the section of the report dealing with article 315 of the Penal Code (para. 28, subpara. (d)), he made it quite clear that the provision did not apply to persons guilty of torture.

20. The term "special chamber" (para. 41) had been misunderstood. It referred not to a special military court but to an ordinary court in which the assessors, and the assessors only, were military personnel with special technical knowledge.

21. Replying to a question by Mr. Zupančič concerning evidence (para. 108), he said that the purpose of an amendment to the Code of Criminal Procedure was to punish any member of the judicial police who extorted a confession by torture. If a court concluded that any of the conditions laid down in article 57 of the Code of Criminal Procedure had not been met, the confession became null and void.

22. Mr. NDIAYE (Senegal) said he would like to clarify some aspects of police custody. Although torture was not explicitly defined in Senegal, the Penal Code made it possible to punish all forms of torture. Nevertheless, the President of the Republic had ordered the Minister of Justice to submit a bill containing a definition of torture, consonant with that set forth in

the Convention, to the next session of Parliament. The Penal Code regulated police custody very carefully, including penalties or disciplinary measures, in its articles 55 et seq.

23. In that context, he emphasized that secret detention was impossible in Senegal both de jure and de facto. If custody extended beyond 48 hours, the detainee had to be informed of the reasons therefor and offered the opportunity of a medical examination by a doctor of his choice. Unless the police report recorded that such action had been taken, the report became null and void. The Government Prosecutor could have a detainee examined by a doctor of his choice at any moment during detention and, in fact, if anyone requested such an examination on the detainee's behalf, the Government Prosecutor was obliged to agree to the request.

24. The police report had to record the exact time and date of the commencement of custody, the reasons therefor, the duration of questioning and rest periods and the exact time and date when custody ended. Those details had to be countersigned by the detainee. If he refused to do so, that too had to be recorded.

25. The provisions of the Penal Code had been clarified by Decree No. 74/571 of 1974 on the Gendarmerie. He quoted several provisions of the Decree and the related articles of the Penal Code.

26. Some provisions governing disciplinary measures in the armed forces (Decree No. 90/1159 of 12 October 1990, for example) made specific reference to the Convention.

27. Laws and regulations were carefully supervised by the authorities, particularly the Minister of Justice, who had issued a number of service instructions dealing with police custody and the independence of the courts.

28. He reiterated that secret detention was impossible, since the detainee's relatives and counsel could refer the matter to the Government Prosecutor who was responsible for supervising detention and police custody. In addition, no one could be held without a proper arrest warrant. He outlined the contents of article 108 of the Code of Criminal Procedure which regulated the right to communicate.

29. In view of the numerous allegations concerning torture, the Head of Government had instructed his ministers to adopt a series of measures to consolidate the rule of law and strengthen human rights, as a result of which the Minister of Justice had already taken steps to prevent impunity, although articles 59, 113 to 117, 164 et seq., 290 et seq. and 110 of the Code of Criminal Procedure effectively provided for punishment and penalties in the event of torture or unlawful behaviour, as did article 111 of the Penal Code.

30. Articles 1 and 116 of the Code of Criminal Procedure enabled both the Government Prosecutor and private individuals to set proceedings in motion, which was a further important means of safeguarding a victim's rights. Several articles of the Code of Criminal Procedure authorized the Government Prosecutor to investigate and deal with all breaches of the Code. Article 32

on the termination of proceedings was yet another guarantee, as it enabled the complainant to claim damages and thus to have a case reopened under article 76.

31. Turning to the specific cases that had been mentioned, he said that a number of allegations had been made concerning events of a highly political nature in the Dakar region. Unfortunately, more attention had been paid to media comment on those events than to the legal considerations involved: in at least two of the cases, all available domestic remedies had not yet been exhausted.

32. One of the cases was that of Mr. Mody Sy. Article 56 of the Code of Criminal Procedure required that any person held in custody had to be advised of his rights and examined by a doctor, and that a report on that examination had to be made. In the case of Mr. Mody Sy, all those requirements had been met and the medical report had not included any mention of violence.

33. When brought before the examining magistrate, Mr. Mody Sy had once again been examined by a doctor - at the request of his counsel - and a second report had been made: that report had been made available to the defence, which had not commented on it. The examining magistrate, after reading the two reports, had decided to call for a third examination, which Mr. Mody Sy had refused. Subsequently, following a complaint by Mr. Mody Sy's lawyers, an investigation had been carried out, but no evidence had been found that torture had been committed. He was glad to say that there was a happy ending to the story in that Mr. Mody Sy was at liberty and was carrying out his duties as a deputy of the National Assembly.

34. As for the case of Mr. Lamine Samb, the Committee would already be aware that Mr. Samb had been detained following the events of 16 February 1994 in which a number of violent, not to say barbarous, acts had been committed. The police had taken immediate action and had arrested several persons carrying weapons at the scene, who had later been interrogated. That interrogation had led to the arrest of Mr. Samb on 17 February.

35. Mr. Samb had made a statement admitting that he had witnessed acts of violence, in which those causing the disturbance had been involved. Unfortunately, in the course of his transfer to another police station he had become ill, and had been taken to hospital, where he had subsequently died.

36. The Government Prosecutor had refused to sign a death certificate and had asked for an autopsy. However, the autopsy report gave no indication that Mr. Samb's death had been the result of violence or ill-treatment. The family had been informed of the conclusions of the report, but had made no comment to date.

37. In the case of Mr. Dejou, who had died in prison in February 1994, the Government Prosecutor had agreed to open an investigation into the cause of death, even though there had been no autopsy report. Nevertheless, the dead man's son had filed a complaint on the basis of article 76 of the Penal Code, and a second investigation had been ordered, which had led to the arrest of three men. That investigation was still in progress.

38. A further case, concerning a child who had been seriously burned on police premises, had been raised by Amnesty International: in fact, it came within the jurisdiction of the Ministry of the Armed Forces. In that connection, he stressed that the Code of Military Justice did not dispense a different brand of justice from that of the Penal Code. Sentences were handed down by professional judges, assisted by military assessors, and offences under ordinary law as well as military offences were examined. Thus, members of the military could be charged by the Government Prosecutor with offences under the Penal Code and, in such cases, an order for arrest had to be issued. The case in question was being investigated.

39. In a further case dating from August 1994 concerning an allegation of torture involving the military police, an order for the arrest of the officers concerned had been issued by the Ministry of the Armed Forces, and acted upon promptly. The investigation was continuing.

40. He cited the more recent example of a complaint against members of the police made on 19 April 1996, which by 22 April had led to the arrest of the persons concerned and the opening of an investigation. That was proof that no human rights violations, and in particular no act of torture, could take place in Senegal without prompt action being taken to identify those responsible.

41. He had been impressed by the Committee's understanding of the difficulties his Government was facing in Casamance. He was unable to say that no human rights violations had ever been committed by Senegal's security forces, and indeed there were few countries in which such a statement could be made. The cause of the problem was that the region was claiming the right to self-determination, and had been waging a campaign of violence since 1993. His Government considered that a climate of peace was an essential precondition for respect for human rights, and had appealed to the militants to lay down their arms, an appeal which had been rejected.

42. Although the Government was always ready to negotiate, and had fixed 8 April 1996 as the date for a cease-fire, further murders and acts of violence had occurred since. That situation should be borne in mind when considering human rights issues in Senegal.

43. The CHAIRMAN, on behalf of the Committee, thanked the delegation of Senegal for its replies to the questions asked.

44. The members of the delegation of Senegal withdrew.

The public part of the meeting rose at 4.50 p.m.

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COMMITTEE AGAINST TORTURE

Sixteenth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 249TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 2 May 1996, at 10 a.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Finland

Second periodic report of Senegal (continued)

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GE.96-16083 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7)(continued)

Second periodic report of Finland (CAT/C/25/Add.7; HRI/CORE/1/Add.59)

1. At the invitation of the Chairman, Mr. Lång, Mr. Velthein, Mr. Lehmus, Mr. Sintonen, Ms. Salojärvi and Ms. Mohell (Finland) took seat at the Committee table.

2. Mr. LÅNG (Finland), introducing his country's report (CAT/C/25/Add.7), said that, as Director-General at the Ministry of Justice for many years, he felt personally responsible for the implementation of the Convention in his country. The size of the Finnish delegation was evidence of his country's interest in the Committee's work and the importance Finland attached to its observations.

3. The situation had changed greatly in Finland over the past two years, particularly in the legislative field. The Constitution contained a new chapter on civil and political rights, dealing with the question of punishment in general and capital punishment in particular, new legislation on prison administration and functioning had entered into force in 1995 and the police had recently been brought under new regulations. The first reason for the changes was that Finland intended scrupulously to discharge all its obligations as a member of the Council of Europe. The second was that much of the relevant legislation had become outdated and needed to be revised; account had to be taken of developments such as the economic recession, which meant that it was not possible to lay as much emphasis as before on productive work by prisoners, in so far as 80 per cent had been unemployed before their imprisonment and would return to being unemployed on release. Work should no longer be regarded as an absolute good, but that was difficult to achieve in a society whose judicial system had always been based on the work ethic.

4. Finland's second periodic report, as well as describing legislative and other changes in Finland, attempted to answer the questions raised during the consideration of the initial report, in November 1990. Among the subjects covered were the procedure for incorporating international instruments in Finnish legislation and the division of duties between the Chancellor of Justice and the Parliamentary Ombudsman.

5. With regard to the implementation of article 4 of the Convention, the report detailed the changes made to the Finnish Constitution in connection with civil and political rights. Quoting section 6 of the amended Constitution, he said that the provisions of the section had been incorporated in the legislation adopted by parliament, particularly those relating to prisons, to arrest in connection with criminal inquiries and to the treatment of the mentally-ill in hospitals.

6. Finland's initial report and paragraphs 12 to 19 of its second report outlined the measures taken against torture in Finland. The new provisions, which had become effective in September 1995, dealt with various forms of assault, ranging from petty assault, which was punishable by a fine, to

aggravated assault, which could carry a 10-year prison sentence. The provisions were worded in such a way that they were in all cases applicable to torture, including psychological torture.

7. A government bill on the reform of the scope of application of the Penal Code of Finland had been introduced in February 1996, proposing that chapter 1 should be amended so as to make Finnish law applicable to all offences committed outside Finland and punishable without regard to the law of the place of commission. It had been suggested that a decree containing an exhaustive list of international offences - including torture - subject to the principle of universality should be added to the provision. Prosecution for an international offence committed abroad would still require an order for prosecution by the Chancellor of Justice. Generally, the scope of application of the Penal Code would be increased to enable Finland to honour its international obligations, for example by participating in the work of the International Tribunal for the Prosecution of Persons Responsible for Crimes Committed in the Territory of the Former Yugoslavia.

8. The Act on International Legal Assistance in Criminal Matters, which had become effective in January 1994, laid down that Finland should provide legal assistance at the request of foreign authorities, regardless of whether the two countries had concluded a treaty to that effect. A provision had been added to section 7 of the Constitution, stating that a foreigner should not be expelled, extradited or returned to an area where he or she was in danger of being subjected to capital punishment, torture or other degrading treatment, nor to a third country from which he or she might be sent to an area where such dangers existed.

9. With regard to article 10 of the Convention, basic training on human rights and fundamental rights, as well as the objectives of the enforcement of punishment, were taught at the Prison Personnel Training Centre. In recent years, the report of the Council of Europe Committee for the Prevention of Torture had been used in training. The Prison Administration Centre had also organized a seminar on "Human rights in prison administration" and the Prison Department had organized courses on international human rights. In the training of police officers, the civil rights and human rights secured by international conventions were discussed systematically. In discussions of human rights and civil rights, special attention was paid to the new regulations concerning basic rights. Human rights and civil and political rights formed a part of all courses at the Police Academy and teachers at the Academy participated in international seminars on human rights.

10. In May 1995, the provisions relating to the treatment of prisoners had been transferred from the Prison Administration Decree to the Act on the Enforcement of Sentences, which stated that prisoners should be treated with justice and respect for their human dignity. Chapter 1, section 3, of the Act stipulated that the imprisonment should be the only punishment. Other restrictions could be used only to the extent required to ensure the certainty of imprisonment and the order of the institution. The Act also provided that the prisoner should be heard whenever a decision was made concerning his or her living or work or transfer to another prison, for example. Discrimination of any kind was forbidden and a long list of reasons was given that could not be used as a basis for any special treatment. In connection with the reform,

other provisions concerned prisoners' correspondence and the use of telephones. Correspondence between a prisoner and a supervisory authority or any body monitoring human rights should be delivered without delay and uncensored. Similarly, a prisoner could write to an international body, such as the Committee against Torture, with the assurance that the letter would be delivered unread. In the same context, provisions concerning the searching and physical examination of prisoners had been defined.

11. The prisoners' earlier obligation to work had been broadened to an obligation to participate in work, training or other activity that improved their ability to live and work in society. Considerable efforts had been made to increase such activities, which aimed at improving prisoners' physical, mental or social abilities.

12. Regulations had been issued in February 1994 on the treatment of persons under 18 years of age, due account being taken of article 37 (c) of the United Nations Convention on the Rights of the Child. The possibility of transferring prisoners from a prison to an open institution had been broadened in May 1995 and, as the matter concerned minors, the transfers were carried out in each case in accordance with their interests. The number of prisoners under eighteen was so low in Finland (six in the summer of 1995 and nine at the present time) that it was difficult to organize special programmes for them. However, everything was being done to serve their interests to the greatest extent possible.

13. A new decree on prison administration contained instructions and more detailed procedures concerning the treatment of prisoners. A new provision concerning foreign prisoners stated that any prisoner who was not a Finnish national had the possibility of contacting his country's diplomatic or consular mission.

14. The report dealt with the question of the system of incarceration of dangerous recidivists. It would perhaps be preferable, in the English version, to use the word "internment". It concerned rare cases: at the present time, some 40 persons were imprisoned for life for murder, while 15 others were under the special incarceration regime, which could at any time be replaced by a specific period of time. In reality, it was no longer possible to speak of an indefinite regime, since for the past 2 years, the Prison Court had always decided to release the prisoners once they had served their entire sentence. The system had been accepted in Europe as being in conformity with the law, but in any event, it was planned to be replaced in time by another procedure.

15. The Police Act and the Police Personal Data File Act, which had become effective in 1995, had been written bearing in mind the human rights conventions and other international obligations binding on Finland. Under those new provisions, the police had to administer justice impartially and promote a conciliatory atmosphere. It must not damage or harm the rights of any person to a greater extent than was necessary to discharge its duties. The powers of the police and the guarantees of the legal protection of citizens were described in as detailed a manner as possible. With regard to inquiries relating to allegations of police criminality, a reform which would become effective in December 1996 would ensure that the prosecutor entrusted

with the investigation would be independent of the police administration. The Ministry of Justice was also preparing a text that would combine the offices of the provincial intermediaries and the office of the highest prosecutor into one national prosecutor's bureau that could become the leading authority in charge of investigations concerning police criminality. A decision of principle had already been made on the issue, and the Minister of the Interior had already drafted a circular for the police services informing them that those matters should be entrusted to the independent prosecutors whenever the latter were already in place.

16. The new legislation provided that the Chancellor of Justice and the Parliamentary Ombudsman had the specific task of defending civil and human rights. It should be stressed that, in keeping with Finnish tradition, those two figures enjoyed very high status which guaranteed their impartiality. He knew from experience that it was best to take seriously the demands for explanation from their departments. The Chancellor and the Ombudsman had extremely broad powers in prosecuting someone for abuse of authority, for example.

17. With regard to the total number of prisoners, Finland was a special case in the industrialized western societies, nearly all of which had seen their prison population increase greatly. On the contrary, Finland's prison population had decreased from some 7,000 prisoners in the 1960s to 3,300 at the present time. Admittedly, that phenomenal development was explained in part by the fact that the prison population had initially been very high. Another interesting fact was the extremely small number of remand prisoners, since they constituted only about 8 per cent of the prison population, whereas the proportion was from 30 to 40 per cent in most countries. That was an important point, since it was those persons who generally had the greatest difficulties in the prison system, the uncertainty in which they found themselves making it more difficult for them to adapt.

18. Very few asylum-seekers (less than a dozen) were detained pending a decision on their case. It was considered preferable to place them in prison rather than in police premises, where material conditions were not appropriate. It was true that placing them in prison establishments, which was the practice in many countries, was not a very satisfactory solution.

19. The CHAIRMAN invited the Committee to comment on the report and the oral presentation of the Finnish delegation.

20. Mr. YAKOVLEV (Country Rapporteur) noted that democratic stability and order were part of the way of life in Finland. Hence it was not surprising that the crime rate and number of prisoners there were so low. Moreover, the Finnish Government, far from giving itself a good mark, always demonstrated its desire to further improve the implementation of the Convention. Its second periodic report was entirely in accordance with the Committee's guidelines and replied to all the questions raised during consideration of the initial report. Not only had legislative measures been taken by Finland but no case of torture had been reported to the Committee.

21. It was gratifying that the revised Constitution now contained an explicit prohibition of torture and other degrading treatment. Moveover, the "principle of normality", whereby prison conditions should resemble as closely as possible those in society at large, was set out in law. Another source of satisfaction, the Preliminary Investigations Act, detailed the methods to be followed during interrogations. Lastly, the establishment of the Rehabilitation Centre for Torture Victims also deserved mention as a concrete and not merely a theoretical measure. A number of questions might, however, be raised, beginning with one close to the Committee's heart, that of the definition of torture. The Convention was quite clear on the subject: it was torture inflicted by a public official or other person acting in an official capacity. That definition could not be associated with that of acts of violence, which was too general. In each case, the agent and the intention differed greatly.

22. With regard to the proposed reform of the preventive detention system (para. 33 of the report), he was not certain about the compatibility between the measures envisaged and the provisions of the Convention and would like simply to be reassured on that subject. The Finnish Human Rights League had questioned a number of provisions of the Immigration Act of 15 July 1993, which included the idea of a list of "safe" countries. He wondered about the exact function of that list. It was his understanding that, in the event of a request for asylum, if the applicant was a national of a country on that list, his request would be rejected immediately. It would be necessary to know what criteria were used to include a country on the list as well as any possible legal guarantees for the persons in question. The Finnish Human Rights League also referred to a number of cases of police brutality. He would welcome the assurance that any complaint involving the police would be the object of an inquiry conducted by authorities other than the police itself.

23. Furthermore, it seemed that there was some discrimination against ethnic minorities in prisons and that Romanies were the primary victims. The interest shown by the Parliamentary Ombudsman in that question seemed, however, to indicate the Government's recognition of the problem and its determination to resolve it.

24. He could not fail to conclude his statement without paying tribute to Finland on the exemplary way in which it respected the Convention.

25. Mr. REGMI (Alternate Country Rapporteur), also congratulating Finland on a report which was outstanding, said that he wished to comment on the importance the Committee attached to incorporating a definition of torture in national legislation. A country like Finland, which was in the forefront of those that upheld human rights, must set an example and provide expressly for a definition of torture in its national legislation.

26. He was gratified at the emphasis placed on the principle of universality, whereby a foreigner could be tried under Finnish law even if the act was not punishable where it had been committed. The Code of Judicial Procedure, on the other hand, struck him as a little ambiguous so far as the principle of free weighing of evidence was concerned and he would like to have some clarification in that regard.

27. Solitary confinement should not exist at all, in his view. From the practical standpoint, however, he would like to know specifically whether a detainee held in solitary confinement could have visits from his relatives and consult a doctor of his choice. He welcomed a number of measures taken with a view to conducting a campaign against and combating firmly the practice of torture. He also welcomed the entry into force of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the establishment of a centre for Torture Victims but he was concerned at the allegations by the Finnish Human Rights League concerning the situation of minorities in Finnish prisons. It seemed that the police along with prison warders were guilty of showing signs of racism particularly against the Romanies. He trusted that question would receive the necessary attention and would like to be informed of the authorities' intentions in that connection.

28. He would also like to have more detailed information concerning article 14 of the Convention and in particular would like to know what was the maximum amount of compensation that would be paid to the beneficiaries of a person who died as a result of torture.

29. Mr. BURNS, congratulating the Finnish delegation on its excellent report, said that he found it hard to make the slightest criticism. He was particularly impressed by the systematic reduction in the prison population over the past 20 years. He would, however, like to revert to the question of the definition of torture. The bill amending the basic provisions of the Constitution, which provided for the incorporation in the Constitution of a prohibition on torture, was a very praiseworthy initiative that would however have been further improved by the incorporation in the Code of Criminal Procedure of a special definition of the crime of torture.

30. As to free weighing of evidence, paragraph 29 of the report was, in his view, very ambiguous and he would like to have an explanation of how it should be interpreted. It was important to know whether the courts had a discretion in the matter inasmuch as article 15 of the Convention prohibited the use in evidence of a statement obtained by torture.

31. With regard to paragraph 46 (b) of the report, he would like to know precisely what administrative custody involved as well as the conditions of such custody. Further, paragraph 78 of the report stated that a person who had been detained or arrested "could be provided with an opportunity to select an attorney", which could suggest that the authorities had a discretion in the matter. What were the conditions for the exercise of the right to counsel in such circumstances?

32. Mr. SØRENSEN said that he too would stress the value of having a definition of torture. For instance, it would be easier to indict a torturer who had operated abroad and then went to Finland if the act of torture constituted a specific criminal offence.

33. Paragraph 77 of the report was somewhat ambiguous and he would like to know what happened in practice when there was a decision to delay notification of the relatives of an arrested person. It was a matter of concern to him, as a medical man, that a police official could be present at medical examinations. Save where there was a real and objective risk - for instance,

in the case of hostage taking - the doctor should remain alone with the person concerned to preserve the privileged relationship between doctor and patient. With regard to paragraph 102 of the report, he would like to know whether the Act on Patient Rights applied to patients in custody as well. He would also like confirmation that, under the Mental Health Act, psychiatric treatment could be imposed only when all of the conditions set forth in paragraphs 105 (a), (b) and (c), not just one of them, had been met.

34. Mr. PIKIS said that he would like to have further clarification about the possibility, as referred to in paragraph 26 of the core-document (HRI/CORE/1/Add.59), of instituting criminal proceedings against an official who infringed human rights. He too would emphasize the difference between "assault" and an act of torture, both in nature and in intensity. In the absence of any provisions on the value of illegally obtained evidence, he would like to know on the basis of which criteria and procedures a judge or court held statements obtained by torture to be invalid.

35. Since confinement in isolation could easily lead to violations of the Convention, it would be useful to know in which cases and for how long a prisoner could be isolated from other detainees. Under Finnish law, a person who had been detained or arrested had the right to converse in private with his attorney unless there was a justified reason to believe that that right would be abused (para. 78 of the report). What abuses were contemplated and could the person concerned appeal against such a decision?

36. The report referred in paragraph 90 to a commission appointed to investigate offences allegedly committed by the police. It would be interesting to have examples of cases dealt with by that commission. He wondered whether the accused had the right to remain silent and, if so, whether he was informed of that right. He would also like to know whether the Mental Health Act (para. 105 of the report) allowed for the possible intervention of the judicial authorities and whether there was any risk that a person who suffered from mental illness might be deprived of his rights.

37. Mrs. ILIOPOULOS-STRANGAS said that she had welcomed with satisfaction the report and oral presentation of the Finnish delegation. Referring to paragraphs 135 and 136 of the report, she asked whether the power conferred upon police officer to decide on the administrative custody of a foreigner was entirely discretionary or whether the Immigration Act laid down conditions and guarantees. Were foreigners held in the same places as Finnish citizens, could they express themselves in their own language and did they have legal aid?

38. The CHAIRMAN asked the Finnish delegation whether, even though allegations of torture were extremely rare in its country, Finland could contribute - if it did not already do so - to the United Nations voluntary contribution fund for victims of torture. He thanked it for its attention and invited it to answer the questions raised at the following meeting.

39. The Finnish Delegation withdrew.

The (public) meeting was suspended at 11.45 a.m. and resumed at 12.35 p.m.*

Second periodic report of Senegal (continued) (CAT/C/17/Add.14): Conclusions and recommendations of the Committee

40. At the invitation of the Chairman, Mr. Youssoupha Ndiaye, Mr. Amadou Diop, Mrs. Maîmouna Diop, Mr. Mamadou Lamine Fofana, Mr. Mandiougou Ndiaye, Mr. Ibou Ndiaye and Mr. El Hadji Abdoul Aziz Ndiaye (Senegal) took seats at the Committee table.

41. The CHAIRMAN invited Mrs. Iliopoulos-Strangas (Country Rapporteur) to introduce the conclusions and recommendations adopted by the Committee at a private meeting regarding the report submitted by Senegal.

42. Mrs. ILIOPOULOS-STRANGAS (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of Senegal (CAT/C/17/Add.14) at its 247th and 248th meetings on 1 May 1996 (see CAT/C/SR.247 and 248) and adopted the following conclusions and recommendations.

A. Introduction

The Committee welcomes the submission by Senegal of its second periodic report and its core document and thanks the delegation for its oral introduction and for its frank collaboration, as demonstrated by its constructive dialogue with the Committee.

B. Positive aspects

The Committee notes with satisfaction Senegal's firm commitment to the defence of human rights, demonstrated, inter alia, by its ratification of a series of international treaties concerning human rights, and the modernization of legislation on the subject which is now in progress. In addition, the State party's frank collaboration with the Committee shows its willingness to fulfil the obligations it assumed when ratifying the Convention.

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* The summary record of the closed meeting, held from 11.50 a.m. to 12.35 p.m., appears as document CAT/C/SR.249/Add.1.

The Committee notes as a positive aspect that the status accorded by the Senegalese Constitution to international treaties ratified by Senegal is higher than that of domestic law.

The Committee welcomes recent developments in Senegal, as set forth in the 'joint communiqué', by the delegation of the Government and non-governmental organizations of 13 March 1996, announcing the establishment of a periodic dialogue and the establishment of a human rights unit.

The Committee also welcomes the fact that the Senegalese delegation, on behalf of the authorities of the State party, has undertaken to provide training for people occupying the posts listed in article 10 of the Convention, including doctors and to implement the procedure regarding the declaration provided for under article 22 of the Convention.

C. Factors and difficulties impeding implementation

At the normative level, the Committee notes the absence of any regulations to render possible the effective implementation of the Convention.

The Committee notes that the conflict in Casamance sometimes impedes the effective implementation of the Convention.

D. Subjects of concern

The Committee is distressed by the numerous cases of torture that have been brought to its attention by non-governmental organizations of established credibility, but also referred to in paragraphs 12, 37 and 103 of the report of the State party.

While taking into account the particular problem of Casamance, which is threatening the security of the State, the Committee recalls that a democracy must, whatever the circumstances, ensure that only legitimate means are used to protect the security of the State, peace and stability.

The Committee is concerned that, in its report, the State party invokes a discrepancy between international and internal law to justify granting impunity for acts of torture committed following the enactment of the amnesty laws.

The Committee is doubtful whether the provisions in force in Senegal can effectively ensure full respect for the fundamental rights of persons in police custody.

E. Recommendations

The Committee recommends that the State party should, during its current legislative reform, consider explicitly introducing in national legislation the following provisions:

(a) The definition of torture set forth in article 1 of the Convention and establishment of torture as a specific offence in accordance with article 4 of the Convention; which would permit, inter alia, the achievement of universal jurisdiction as provided for in articles 5 et seq. of the Convention.

(b) A blanket prohibition of torture, with the stipulation that no exceptional circumstances should be invoked to justify torture, in accordance with article 2, paragraph 2, of the Convention.

(c) A provision expressly stipulating that an order from a superior officer or from a public authority may not be invoked as a justification for torture, in accordance with article 2, paragraph 3, of the Convention.

(d) An explicit prohibition of torture to obtain evidence, in accordance with article 15 of the Convention, and prohibition of any statement which is established to have been obtained in such a way and invoked as evidence in any proceedings.

The Committee recommends that all crimes referred to in article 4, paragraph 1, of the Convention be made subject to rigorous and speedy ex officio investigation and prosecution by the competent judicial and prosecution authorities.

The Committee recommends that any person accused of an offence under the criminal law should be subject to an objective investigation, and, in the event that his responsibility is established, handed over to the competent authority as soon as possible.

The Committee recommends that article 79 of the Senegalese Constitution, establishing the precedence of international treaty law ratified by Senegal over internal law be implemented unreservedly. It also believes that the amnesty laws in force in Senegal are inadequate to ensure the implementation of certain provisions of the Convention.

The Committee hopes that the allegations made by the non-governmental organizations will be investigated and the results transmitted to the Committee.

The Committee would welcome a contribution, however symbolic, from the Senegalese Government to the United Nations Voluntary Fund for Victims of Torture."

43. The CHAIRMAN invited the delegation of Senegal to comment on the Committee's conclusions and recommendations.

44. Mr. DIOP (Senegal) thanked the Committee for giving the Government of Senegal the opportunity to express its views and for its suggestions, which would help the country to adopt, and improve, its legal provisions in the ever-changing field of human rights. Senegal solemnly reaffirmed that it was committed to the Committee's work and intended to honour its commitments, in the light of the Committee's conclusions and in view of primacy of international law over internal law. Senegal, which was keen to modernize its legislation, had already started work on several reforms which tallied with the Committee's recommendations in several important areas, including: the definition of torture, its characterization in criminal law of the conduct of investigations and procedures governing police custody, on which guidelines had just been adopted.

45. The CHAIRMAN thanked the delegation of Senegal for its cooperation and frankness.

46. The delegation of Senegal withdrew.

The meeting rose at 1 p.m.